



June 14, 2009

Hon. Jean Cunningham
Chairman
State Board of Elections
Washington Building, First Floor
1100 Bank Street
Richmond, Virginia 23219

Via Mail & Fax

Re: Task Force on Voter Residency

Dear Chairman Cunningham:

In light of the announcement, on Friday, June 12, that you do not intend to call any further meetings of the Task Force on Voter Residency until July 9, I wanted to submit two documents for incorporation into any draft regulations:

- (1) A summary of applicable Constitutional and legal standards that underscore the duty of General Registrars to determine the bona fide residency of each individual who submits a voter registration form; and
- (2) A draft regulation that provides for uniform treatment of all voter registration applicants and that removes any differential treatment of university students.

The State Board's legal responsibility is to harmonize the affirmative legal duty of General Registrars to determine each applicant's true residency in a highly mobile society with their corollary duty to treat citizens equally under the Equal Protection Clause of the Fourteenth Amendment. The enclosed regulation harmonizes those equally important legal obligations. Importantly, the proposed regulation would not single out university students, military voters, or any other group of citizens for any differential treatment by General Registrars. A questionnaire administered to all voter registration applicants would nonetheless facilitate the discharge of General Registrars' legal obligation to register only the individuals who meet the constitutional requirements.

It is important to treat each voter in the same manner. But residency determinations are inherently unique, based upon the particular facts and circumstances of each individual. The questionnaire proposed in this regulation is designed to cover all facts and circumstances that case law and statutes from other states have deemed relevant to determination of an individual's residency. *See, e.g., Sachs v. Horan*, 252 Va. 247 (1996) (factual determination); *Kegley v. Johnson*, 207 Va. 54 (1966) (factual determination); *Alami v. City of Williamsburg*, No. CL010296-00 (Va. Cir. Ct., filed Mar. 2, 2004) (highly contextual factual determination); *Lloyd v. Babb*, 296 N.C. 416 (1979) ("If

necessary to ensure that registrars comply with the law and make the necessary inquiries a court may order that these inquiries be in the form of a questionnaire to be devised by the court or by the county board of elections under the court's supervision.”); *Dyer v. Huff*, 382 F.Supp. 1313 (D. S.C. 1973) (“The County Registration Board is charged with the responsibility of registering only legally qualified persons and it is absolutely necessary that an applicant be a legal resident of the state and county in which he attempts to register. The Board would be derelict in its duty to blindly accept a statement of residency by each applicant.”).

Va. Code § 24.2-404(D) requires the State Board to issue a regulation that ensures **“uniform application of the law for determining a person’s residence.”** The statute clearly requires a determination of each person’s residence, but in a uniform manner. The regulation ultimately proposed and adopted by the State Board must accomplish both of these objectives.

I request that this letter and the two enclosures be made part of the formal regulatory record in this matter and considered in the drafting of a regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee E. Goodman", with a stylized flourish at the end.

Lee E. Goodman

Enclosures (2)

cc: Mr. James Alcorn
State Board of Elections

Mr. James Hopper
Office of the Attorney General

UNIFORM PROCEDURE FOR DETERMINING A PERSON'S RESIDENCE

Submitted by
Lee E. Goodman
June 14, 2009

1. Article II, Section 2 of the Constitution of Virginia provides that the "The General Assembly shall provide by law for the registration of all persons otherwise qualified to vote who have met the residence requirements contained in this article, and shall ensure that the opportunity to register is made available."
2. Article II, Section 1 of the Constitution of Virginia requires each individual seeking to register to vote in Virginia to meet the following qualifications:
 - (a) Citizen of the United States;
 - (b) Eighteen Year of Age;
 - (c) Resident of the Commonwealth; and
 - (d) Resident of the Precinct
3. Article II, Section 1 of the Constitution of Virginia provides that "Residence, for all purposes of qualification to vote, requires both domicile and a place of abode." Va. Code § 101 provides that "Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells."
5. Each General Registrar has a duty to determine each applicant's qualifications to register to vote in the Commonwealth and in the Precinct where the applicant presents himself to vote. This determination includes a reasonable inquiry into the applicant's residency, defined to mean the applicant's place of dwelling and place of domicile.
6. Each individual who seeks to register to vote has a right to be treated on an equal basis to other similarly situated individuals. This includes a uniform inquiry into each applicant's residency. However, as demonstrated in numerous federal and state court decisions on the issue of voter residency, in Virginia and elsewhere, determination of an individual's true residency necessarily entails a case-by-case factual determination based upon unique and objective facts of each individual's circumstances.
7. Va. Code § 404(D) requires that "The State Board shall promulgate rules and regulations to ensure the uniform application of the law for determining a person's residence."
8. Beginning September 1, 2009, each General Registrar shall issue to all voter registration applicants a Residency Certification Form to be published by the State Board of Elections, which shall require all voter registration applicants to sign the following statement under oath: "I certify under oath that I reside at the address I have identified on my Virginia Voter Registration Application Form, that I intend to remain a resident of

this locality in Virginia, and that I have no present intent to be a resident of any other locality in Virginia or another state.”

8. Beginning September 1, 2009, each General Registrar shall require each voter registration applicant – without discriminating against any group of applicants – to complete a questionnaire appearing on the Residency Certification Form to be published by the State Board requiring answers to the following questions under oath:

- (a) Are you currently registered to vote at another address?
 - (i) If yes, in which city/county and state are you registered to vote?
 - (ii) If yes, do you wish to cancel your registration in that place?
- (b) Do you have a driver’s license?
 - (i) If yes, what state issued the driver’s license?
 - (ii) If yes, what city/county is listed as your home address?
- (c) Have you paid state income taxes to Virginia in the past year?
 - (i) If yes, what City or County did you identify as your address on your Virginia tax return?
- (d) Have you paid state income taxes to any other state in the past year?
 - (i) If yes, to which state did you pay state income taxes?
- (e) To your knowledge, have you been claimed as a dependent on anyone else’s federal income tax returns in the past year?
 - (i) If yes, in which city/county and state does that individual reside?
- (f) Do you own a vehicle?
 - (i) If yes, in which city/county and state is the vehicle registered?
- (g) Are you employed?
 - (i) If yes, in what city/county and state do you report to work?
- (h) Do you receive any kind public benefits, such as social security benefits, welfare benefits, tuition assistance benefits, or similar benefits?
 - (i) If yes, in which city/county and state are your registered for purposes of receiving such public benefits?
- (i) Do you own any real estate, such a residential house or condominium?
 - (i) If yes, in which city/county and state is your real estate located?

- (j) Do you lease any real estate, such a residential house, apartment or condominium?
 - (i) If yes, in which city/county and state is it located?
 - (ii) If yes, at the conclusion of your lease term, do you intend to remain in this locality or move to another locality or state?
- (k) Do you live in this locality in Virginia all year, or do you spend part of the year in another locality or state?
 - (i) If you spend part of the year somewhere else, where?
- (l) Do you intend to return to live in a city/county or state other than the residence address you listed on your voter application?
 - (i) If yes, to which city/county and state do you intend to return?
- (m) Please list any other facts that show you are a resident of this locality in Virginia, including military service, family ties, financial ties, community ties and similar circumstances.

9. All new Virginia Voter Registration Application Forms printed after issuance of this regulation will include this questionnaire as part of the form.

10. Each applicant's answers to the questions appearing on the questionnaire shall be considered by the General Registrar in determining the applicant's true domicile based upon objective facts and circumstances. A General Registrar may reject an application based upon the applicant's answers to the questions only if the answers, taken as a whole, objectively indicate that the individual is not a bona fide resident of the locality in Virginia where s/he has applied for registration. Alternatively, a General Registrar may make further inquiry of a voter registration applicant only if the answers to the questions indicate that the applicant has not objectively manifested a present intent to remain indefinitely in the locality where the individual seeks to register.

11. In determining the residency qualification of each voter registration applicant, the General Registrar must apply the following uniform rules and presumptions of residency:

- (a) The residence given for voting residence is presumed to be the same as the residence given for a current driver's license, current motor vehicle registration, and current tax address for state income tax purposes. This presumption can be rebutted by the applicant by demonstrating good cause for any difference in these addresses.
- (b) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change in residence.
- (c) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state, county, municipality,

precinct, ward, or other election district of Virginia, for temporary purposes only, with the objectively demonstrable intent of returning.

- (d) No presumption in favor or against residency may arise on the basis that the individual's residential address is a dormitory or on account of an individual's status as a student. No individual can be deemed to have established or lost residency by reason of the person's presence or absence while enrolled in as a student at any college, university, or other institution of learning in this state.
- (e) No presumption in favor or against residency may arise on the basis that the individual's residential address is on property within the boundaries of this state which has been ceded to, or acquired by, the federal government shall be denied the right to vote in elections of this state or the jurisdiction wherein such property lies.
- (f) No presumption in favor or against residency may arise on the basis that the individual is a member of the United States Armed Forces stationed in Virginia.
- (g) No individual may be required to claim the same residence as his or her spouse. Spouses may claim different residences.
- (h) The residence of a person who lives on property that crosses a jurisdictional boundary line is the jurisdiction where the person's usual sleeping bed is located.
- (i) A homeless person may register to vote at a nontraditional residence, including, but not limited to, a shelter, park or underpass, if the person can demonstrate that is the place where s/he regularly lays their head at night. No presumption in favor or against residency may arise on the basis that the individual is homeless.
- (j) A non-felon who is incarcerated in a correctional facility may apply to register to vote in any locality where that person previously established residency.
- (k) Once registered as a resident of a locality in Virginia, a person loses voting residence in a locality in Virginia by voting in any other place.

12. Each voter registration applicant whose application is denied on the basis of residency or any other purpose may appeal the General Registrar's decision to the Circuit Court for the locality where s/he applied and was denied registration.

-end-

CONSTITUTIONAL REQUIREMENT OF RESIDENCY

Submitted by
Lee E. Goodman, Esq.
June 14, 2009

VIRGINIA CONSITUTION

ARTICLE II, SECTION 1. QUALIFICATION OF VOTERS.

In elections by the people, the qualifications of voters shall be as follows: **Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article.** No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.

The residence requirements shall be that each voter shall be a resident of the Commonwealth and of the precinct where he votes. Residence, for all purposes of qualification to vote, requires both domicile and a place of abode....

ARTICLE II, SECTION 2. REGISTRATION OF VOTERS.

The General Assembly shall provide by law for **the registration of all persons otherwise qualified to vote who have met the residence requirements contained in this article**, and shall ensure that the opportunity to register is made available.

VA CODE § 24.2-101

"Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. **To establish domicile, a person must live in a particular locality with the intention to remain.** A place of abode is the physical place where a person dwells.

VA CODE § 24.2-404(D)

The State Board shall promulgate rules and regulations to ensure the **uniform application of the law for determining a person's residence.**

SACHS V. HORAN, 252 VA. 247 (1996)

"When a prospective voter's right to vote in a given locality is challenged, he has the burden of proving that he meets the registration requirements. *Kegley v. Johnson*, 207 Va. 54, 57, 147 S.E.2d 735, 737 (1966).... Before an individual can qualify to vote in Virginia, he must be a resident both of the Commonwealth and of the locality in which he seeks to vote. *Va. Const. art. II, § 1; Code § 24.2-417*. "Residence, for all purposes of qualification to vote, requires both domicile and place of abode." *Va. Const. art. II, § 1*. To establish domicile, a person must live in a particular locality with the intention to

remain there for an unlimited time. *State-Planters Bank & Trust Co. v. Commonwealth*, 174 Va. 289, 295, 6 S.E.2d 629, 631 (1940). A place of abode is the physical place where a person dwells. See *Black's Law Dictionary* 7 (6th ed. 1990). An individual who meets the Constitutional requirements may register to vote in the established locality. *Va. Const. art. II, § 2.*"

KEGLEY V. JOHNSON, 207 VA. 54 (1966)

[Note: A University of Virginia student's registration application was denied. He appealed to the Albemarle County Circuit Court. He was asked questions to establish his residency. The Circuit Court sustained the Registrar's determination based upon the facts and circumstances.]

"Thus, every Virginia decision which has come to our attention, touching upon the right to vote or to hold public office, has equated the term 'residence' with 'domicile.' In order to be eligible to register to vote under the Constitution and statutes of Virginia, the prospective voter, when his right to register is questioned, has the burden of satisfying the dual domiciliary requirements of presence and intention with respect to the locality in which he seeks to vote."

ALAMI V. CITY OF WILLIAMSBURG, NO. CL010296-00 (Va. Cir. Ct. filed Mar. 2, 2004)

[Note: Two William & Mary students' registration applications were denied. They appealed to the Circuit Court for the City of Williamsburg. They were asked questions including whether they served in the Virginia National Guard, whether they intended to remain in Williamsburg indefinitely, whether they received in-state tuition, where they filed their tax return, whether anyone claimed them as a dependent, whether their car was registered in Virginia, whether they lived in a dormitory, where they spent school days and summer vacation, whether they had family living in Williamsburg, and whether they owned property in Williamsburg. The Circuit Court sustained the Registrar's determination as to one of the students, Alami, because Alami had lived with her family in another jurisdiction of Virginia and did not demonstrate an intent to remain in Williamsburg indefinitely. The Circuit Court reversed the Registrar's determination as to the other student, based upon the unique facts and circumstances of each student.]

"[Lowe] has an obligation to the Commonwealth of Virginia for six years. Now, he may eventually be able to transfer his obligations to another unit, but for right now at the present time he is a member of the Virginia National Guard. He's attending meetings, and I can't think of anything that would show an intent to remain in the Commonwealth more than being a member of the Virginia National Guard. So accordingly, I direct that he be registered to vote."

UNITED STATES V. SYMM, 445 F. Supp. 1245 S.D. Tex 1978), aff'd 439 U.S. 1105 (1979)

In the case at bar, plaintiff does not challenge the Symm questionnaire *per se*, but alleges that in fact Mr. Symm has improperly denied voter registration to numerous students at Prairie View and that the Symm questionnaire was an integral step in the procedure

involved in such denial. In addition, there is here both allegation and proof that the questionnaire was used as a part of a pattern of conduct in which Symm denied Prairie View students the right to vote or abridged such right by the application of a presumption declared unconstitutional in *Whatley* and in the other cases discussed above.

Texas Authorities

The evidence in this case establishes that Symm is the only registrar in the State of Texas who uses the questionnaire of the type here in controversy. Seventy counties in the state have institutions of higher learning, and Symm is the only county registrar who employs a questionnaire of the type here under attack. Symm contends this fact is not only immaterial, but that it establishes that he is the only registrar in the state who complies with the requirements of law and who conscientiously makes a factual determination as to the residence of students.

* * *

Mr. Symm's forthright admission that he has, for many years, applied the unconstitutional presumption of *Whatley* establishes that the plaintiff is entitled to relief against Symm. Since Symm has, for a number of years (in the face of advice from the Secretary of State) continued to apply to the students of Prairie View an erroneous rule of law in making his factual determinations of residency, the court believes that a detailed injunction is appropriate and counsel are directed to prepare, and if possible agree upon, the form of an appropriate judgment.

LLOYD V. BABB, 296 N.C. 416 (1979)

"The test of domicile for voting purposes must therefore exclude only those whose exclusion is necessary "to preserve the basic conception of a political community." We think the extent to which a state may limit access to the right to vote by virtue of its law of domicile is as was stated by Judge Friendly writing for a three-judge court in *Ramey v. Rockefeller, supra*, 348 F. Supp. at 788:

"[T]he only constitutionally permissible test is one which focuses on the individual's present intention and does not require him to pledge allegiance for an indefinite future. *The objective is to determine the place which is the center of the individual's life now, the locus of his primary concern.* The determination must be based on all relevant factors; it is not enough that a student, or any other former nondomiciliary, would find that the place of his presence is more convenient for voting or would enable him to take a more active part in political life. The state may insist on other indicia, including the important one of abandonment of a former home." (Emphasis supplied.)

"We therefore hold that a person has domicile for voting purposes at a place if he (1) has abandoned his prior home (2) has a present intention to make that place his home, and (3) has no intention presently to leave that place. Applying this rule to the more specific case of students we hold that a student is entitled to register to vote at the place where he is attending school if he can show by his declarations and by objective facts that he (1) has

abandoned his prior home, (2) has a present intention of making the place where he is attending school his home and (3) intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile.

"In dealing with this aspect of the case, we are not inadvertent to the decision of the United States Supreme Court in *Symm v. United States*, 39 CCH S.Ct. Bull., p. B724 (January 15, 1979), *summarily aff'g*, *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978). *Symm* was a suit brought by the United States alleging that Leroy Symm, the Tax Assessor-Collector of Waller County, Texas, had in the course of his duties as chief election registration official of the county denied students at Prairie View A&M University the right to register to vote in violation of the 14th, 15th and 26th Amendments. Also joined as defendants were the State of Texas and Waller County.

The evidence offered in the case showed that Symm required students seeking to register to fill out a detailed questionnaire, set out at 445 F. Supp. 1262-63. He also presumed that all students seeking to register were not residents of Waller County, thus applying a presumption that was declared unconstitutional in *Whatley v. Clark*, *supra*, 482 F. 2d 1230. Lastly, Symm testified as to the test for domicile he applied, "that generally students are not regarded by him as residents unless they do something to qualify as permanent residents, such as marrying and living with their spouse or obtaining a promise of a job in Waller County when they complete school. He does not regard a dormitory room as a permanent residence, and regards a permanent residence only as a place with a refrigerator, stove and furniture." 445 F. Supp. at 1251.

* * *

"We do not think the Supreme Court's decision in *Symm* precludes us from approving the use of a questionnaire or from allowing our registrars to apply a presumption of nonresidency in order to place the burden of producing some evidence of residency upon the person seeking to register. The district court in *Symm* disapproved of a pattern of conduct aimed at preventing students from registering to vote. It carefully avoided holding the use of a questionnaire per se unconstitutional, distinguishing its situation from *Ballas v. Symm*, 494 F. 2d 1167 (5th Cir. 1974), which it read as approving the use of a questionnaire in making voter registration determinations so long as it was not used as a device to prevent legal residents from voting. The practices we have approved under the guidelines we have set out are clearly not devices to keep students who are legal residents from voting. They are instead designed to help registrars obtain the necessary facts to determine whether a student is entitled to vote in a particular locality. Lacking a more definite signal to the contrary from the United States Supreme Court, we hold that their use is permissible.

* * *

"On remand if evidence adduced at trial shows that the members and officials of the Orange County Board have failed to require students seeking to register to vote to prove their domicile to be in Orange County, the court may enjoin them from further registering students without doing so. Although the court also has the power to order the

Orange County Board to use a specific set of questions in connection with registering students to vote, the court should use caution in the exercise of this power.

“Plaintiffs have asked for both a writ of mandamus and a mandatory injunction against the Orange County Board. The writ of mandamus is an ancient and carefully circumscribed extraordinary remedy. Normally, it will not lie to control the manner of performance of a public official's duties. *Ferris & Ferris, Extraordinary Legal Remedies* § 208 (1926). For this reason, we doubt that use of a specific set of questions could be required by a writ of mandamus.⁸ Moreover, a suit for a mandatory injunction against a public official is practically identical to a request for a writ of mandamus. *Sutton v. Figgatt*, 280 N.C. 89, 185 S.E. 2d 97 (1971); *Carroll v. Board of Trade*, 259 N.C. 692, 131 S.E. 2d 483 (1963); *Hospital v. Wilmington*, 235 N.C. 597, 70 S.E. 2d 833 (1952). Here, however, there is a difference between them. If the evidence shows that registration officials have consistently failed to comply with the law in the past and that unless they are required to use a particular set of questions there is reasonable certainty they will continue to do so, then the court may in the exercise of its inherent equitable powers require them to do so.

8 *Hall* did not require the use of a particular set of questions. It suggested a number of appropriate inquiries that might be made. Normally, it will be better to keep the inquiry flexible so that the circumstances of each individual's case can be carefully considered. There is no legal duty to formulate and use a particular questionnaire. Mandamus is available only when there is a clear legal right to the remedy. *Snow v. Board of Architecture, supra*, 278 N.C. 559, 160 S.E. 2d 719.

“Even so the court should be aware of its own limitations. As was said by another court when confronted with this same issue:

“It is doubtful that any court has the wisdom to compose a list of questions which could be used by a registration board in determining every issue of residency that might be presented.” *Dyer v. Huff, supra*, 382 F. Supp. at 1316.

“If a list of questions seems necessary, we suggest that the better practice would be to draw on the expertise of the Orange County Board to prepare a list for submission to and approval by the court.

“In order to assist the trial court on remand and for the guidance of local boards of elections, we summarize the aspects of our opinion dealing with the registration of student voters as follows:

1. A student's residence for voting purposes is a question of fact dependent upon the circumstances of each individual's case. There is no permissible manner for making group determinations of residence.

2. A person is a resident of a place for voting purposes if he (1) has abandoned his prior home, (2) has a present intention to make that place his home, and

(3) has no intention presently to leave that place. Applying this test to a student, he may vote in a college town if he (1) has abandoned his prior home, (2) has a present intention of making the college town his home, and (3) intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile.

3. In order to determine whether in fact a student has abandoned his prior home and presently intends to make the college town his home and intends to remain in the college town at least as long as he is a student there, a registrar should make inquiry of students more searching and extensive than may generally be necessary with respect to other residents. The kind of questions that should be asked are generally set out in *Hall*. A registrar is not limited, of course, to these questions. One that should be asked of all persons seeking to register is "Are you now registered to vote, and, if so, where?" A registrar is not bound by a student's mere statements as to his intent, no more than he is bound by the statements of anyone seeking to register to vote. According to G.S. 163-72:

"After being sworn, the applicant shall state as accurately as possible his name, age, place of birth, place of residence, political party affiliation, if any, under the provisions of G.S. 163-74, the name of any municipalities in which he resides, and any other information which may be material to a determination of his identity and qualification to be admitted to registration. The applicant shall also present to the registrar written or documentary evidence that he is the person he represents himself to be. *The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to the applicant's qualifications.*" (Emphasis supplied.)

"If necessary to ensure that registrars comply with the law and make the necessary inquiries a court may order that these inquiries be in the form of a questionnaire to be devised by the court or by the county board of elections under the court's supervision."

WILLIAMS V. SALERNO, 792 F.2d 323 (2nd Cir. 1986)

"The [Westchester County, NY Board of Elections] may not, contrary to the language contained in its letter, create such an irrebuttable presumption against student residency. *Auerbach v. Rettaliata*, 756 F.2d [350 (2d Cir. 1985)] at 353. This does not mean that the Board may never subject student applicants to an additional level of inquiry as provided for in *section 5-104*. The Board remains free to take reasonable, good faith steps to determine the true residence of a student applicant. In making that determination, however, the Board may not subject student applicants to a different substantive standard than is applied to other categories of applicants generally. *Id.* at 353.... It is constitutionally permissible for a board of elections to subject students and other categories of people likely to include transients to an additional level of inquiry pursuant to *section 5-104(2)*."

DYER V. HUFF, 382 F.SUPP. 1313 (D. S.C. 1973)

"3. In the case of *Carrington v. Rash* 380 U.S. 89, 13 L. Ed. 2d 675, 85 S. Ct. 775 (1965) the Supreme Court held that election officials may look behind the mere declaration of residency of a voter to determine the "actual facts and circumstances". The plaintiffs are

asking this Court to disregard the plain language of *Carrington* and allow college students to register and vote on a bare written declaration of residency. While accusing the defendants of discriminating against them because they are college students, these very plaintiffs ask the Court to create a special category for college students so as to prevent registration boards from going behind their residency declarations. This the Court cannot and will not do, and the request by the plaintiffs is indicative of their lack of understanding of residency as a requirement for registration and voting.

“The County Registration Board is charged with the responsibility of registering only legally qualified persons and it is absolutely necessary that an applicant be a legal resident of the state and county in which he attempts to register. The Board would be derelict in its duty to blindly accept a statement of residency by each applicant. There is nothing wrong or even suspect in registration officials asking college boarding students, whose permanent addresses are outside the county, certain questions to determine residency and their qualifications.

“4. The plaintiff cites *42 U.S.C. 1983* and the “Voting Rights Act of 1965, as amended, *42 U.S.C. 1973 et seq.*,” and numerous decisions which are not applicable to the present case.

“The *Twenty-Sixth Amendment to the Constitution of the United States* and the various statutes and cases cited by the plaintiffs do not allow a citizen to vote anywhere he desires. Residency is always a prerequisite to registration and voting and these plaintiffs have failed to prove that they are residents of Greenville County, South Carolina.

“5. The plaintiffs contend that only students, itinerant farmers and traveling salesmen are required to answer the questions contained in the Attorney General's letter of November 22, 1971, and that the defendants do not uniformly ask each of the eleven questions to each student before determining the issue of residency. The argument that this is conclusive of the absence of an ascertainable standard is unpersuasive. Residency is a mixed question of law and fact and one that has given courts difficulty from the beginning of time. It is doubtful that any court has the wisdom to compose a list of questions which could be used by a registration board in determining every issue of residency that might be presented. Since these questions and the procedures of the defendants are fair, reasonable and adequate to determine residency, they have the approval of the United States Supreme Court in *Carrington* at page 95 and 96:

“The declarations of voters concerning their intent to reside in the State and in a particular county is often not conclusive; election officials may look to the actual facts and circumstances. . . . By statute, Texas deals with particular categories of citizens who, like soldiers, present specialized problems in determining residence. Students at colleges and universities in Texas, patients in hospitals and other institutions within the state, and civilian employees of the United States Government may be as transient as military personnel. But all of them are given at least an opportunity to show the election officials that they are bona fide residents.”

“At page 96:

"We recognize that special problems may be involved in determining whether servicemen have actually acquired a new domicile in a State for franchise purposes. We emphasize that Texas is free to take reasonable and adequate steps, as have other States, to see that all applicants for the vote actually fulfill the requirements of bona fide residents."

-end-